

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

JANE R. LITTMANN, PH.D.,	)	C/A No. 3:03-762-CMC-BM
	)	
Plaintiff,	)	ORDER AFFIRMING
	)	NON-DISPOSITIVE RULING
v.	)	
	)	
SOUTH CAROLINA DEPARTMENT OF	)	
MENTAL HEALTH,	)	
	)	
Defendant.	)	
	)	

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This court has reviewed the non-dispositive order of Magistrate Judge Bristow Marchant entered July 12, 2005. Defendant objects to that portion of the order which denied Defendant's motion to strike, in full, two affidavits filed by Plaintiff in opposition to Defendant's Motion for Summary Judgment. Plaintiff objects to that portion of the order which granted Defendant's motion to strike certain attachments to Plaintiff's own affidavit.

Non-dispositive rulings by a magistrate judge may be reversed only if they are clearly erroneous or contrary to law. *See* Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). The question is not, therefore, whether the Magistrate Judge could have or this court would have reached a different result.

Only the issue as to the admissibility of the testimony (or affidavit) of Dr. Alexander Donald presents even a close question. This court concludes that the Magistrate Judge could have excluded this testimony for the various reasons argued by Defendant. Defendant has not, however, convinced this court that the Magistrate Judge's decision to allow Dr. Donald's testimony is clear error or contrary to law. In reaching this conclusion, the court has considered that the Magistrate Judge indicated that he would "allow the Defendant to pursue *any necessary additional discovery* required

as a result of Dr. Donald being a witness in this case.” Order at 6 (emphasis added). While the Magistrate Judge indicated that this would “includ[e] the taking of [Dr. Donald’s] deposition,” he did not indicate that discovery would be so limited. As Defendant’s memorandum suggests, the additional discovery necessary to avoid unfairness may include a limited redeposition of Plaintiff relating, in particular, to her contact with Dr. Donald which led to the filing of the affidavit as well as the identification and depositions of other witnesses (or supplemental affidavits or previously identified witnesses) whose testimony may be necessary to respond to Dr. Donald’s testimony.

Given the need for additional discovery, this court further concludes that it should deny the now-pending motion for summary judgment without prejudice. This motion may be renewed after the conclusion of such additional discovery as may be necessary to avoid unfair prejudice to Defendant as a result of the addition of Dr. Donald as a witness. The time frame to be allowed for that discovery and the scope of the discovery are left to the sound discretion of the Magistrate Judge.

Accordingly, the Magistrate Judge’s order of July 12, 2005, is AFFIRMED.

**SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

August 3, 2005  
Columbia, South Carolina